process, there will be but a small number, occupying the first rank of privilege among the material-men. It appears however, from the analysis of the claims submitted by the Commissioner, that there are some of this description. These will be ascertained by reference to the report; and full payment will be decreed to them, so far as they have admiralty liens. The claim of George F. Morton, of Erie, Pennsylvania,—the boats being foreign as to him —will be included in the class of privileged claims to be first paid.

The claims for seamen's wages, and the preferred class of material-men being provided for in the decree, those who have acquired liens by seizure under the law of Ohio, will constitute the next class. These will be paid pro rata, from the funds remaining, without reference to the order of time, in which the seizures were made.

It is proper to notice, that the claim of James M. Sexton, the original libellant in the case of the Troy, embraces an account for wages, as master of the boat, and also as mate. It is clear, that upon no principle has the master a lien on the vessel for his wages. This part of the claim is therefore rejected; and the decree will embrace only the amount due him for wages, as mate.

These are the only material points presented on the exceptions to the report of the Commissioner. A decree in each of the cases will be entered in accordance with the principles before stated.

The libels filed by interveners, having neither an admiralty lien, or a lien by seizure under the Ohio Statute, are dismissed at the costs of the libellants.

LEGAL MISCELLANY.

LEGAL PRINCIPLES.

No. VII.

In our last, we had occasion to observe, that the more close and accurate our investigations, the fewer exceptions we find to the various principles of the law. It may be added, that the fewer in number we perceive the elementary legal principles to be.

All things are resolvable into a few original elements; truth is so, and legal truth is no exception to the rule. For example, the various maxims of the law, which have come down to us from our forefathers, in their ancient dress of Latin and barbarous French, are often looked upon as original legal principles. So, indeed, many of them are; but many, also, are mere offshoots from others, being only secondary, or consequential, steps of reasoning, or fragmentary expressions of what in other maxims is expressed in more broad and comprehensive terms. Thus the maxim, famous in insurance law, and much regarded in some other departments of jurisprudence, *Non remota causa sed proxima spectatur*, is only a particular statement of a larger truth more accurately expressed in the comprehensive words, *De minimis non curat lex*. Now this latter maxim, that the law does not concern itself about small things, is universal; not, indeed, to be applied to every question, but to every case and circumstance which, in its own nature and in the nature of jurisprudence, it will *fit*. And a close examination of the matter will doubtless show, that the reason why the law does not regard the remote, but only the proximate cause, as expressed in the former maxim, is that the remote cause is too small a thing for it to notice. When, however, the remote cause is not too small, the law does regard it; and hence we read of exceptions to this maxim. But if we sink this maxim, and adhere only to the other more comprehensive and more accurate one, we gain two objects—first, we reduce the number of our legal principles; and secondly, we get rid of encumbering our minds most unsatisfactorily with exceptions.

We have brought forward this illustration merely to enforce the general idea, that we should always resolve back propositions in the law as far as possible to their original elements, which elements only are to be regarded properly as legal principles.

There is the same difference between a mere legal truth and a legal principle, as between the trunk and twig of a tree. And one of the most important arts of our profession is to distinguish twigs from trunks. Legal trees are to be ascended. We are to find, and know, and remember where are located, the trunks; from which we may go up at pleasure to the twigs.

But discarding all figure of speech, when we have presented to us what we know to be a legal truth, our care should be to ascertain whether it be an elementary truth. Can it be traced to a doctrine, more general and universal, of which it is a secondary form? If so, what is that doctrine, and what other secondary forms have arisen from it?

Now, suppose we have thus found what appears to be a general first principle. We trace out that principle to its various consequences. Are those consequences such as the adjudications of the courts show us to have an actual existence in the law? If we see, on the comparison, that our supposed principle, traced in every direction, leads to consequences precisely in accordance with the facts of the law as exemplified in the decisions of the Courts, we conclude that it is true and sound; in other words, that it is a legal principle. In so comparing our deductions with the decisions, we do not inquire, as being material, whether or not the judges, in arriving at the decisions, have recognized our principle. If they have, we may still find that it is erroneous; if they have not, we may yet find that it is correct.

But suppose we discover a single case or two not in accordance with the deductions from our principle. Such a case will cast suspicion on the principle; yet still the case may be wrong. It would be impossible to lay down any exact rule as to how many adjudications would suffice to show a supposed principle erroneous. Two things might, however, happen together—that the principle would be right; and, at the same time, that a series of adjudications, which could not be overthrown, would be found to conflict with some inevitable deduction from it. Here we should be obliged to admit, that there was an *exception* to the principle—a matter which we discussed in our last number.

These hints will serve, in some degree, to satisfy the inquiry, how legal principles are to be learned. But it may be objected, that such a process of learning them, so laborious and slow, could only be gone though in one's lifetime. This is undoubtedly more than true. No man's life would be long enough for a thorough acquisition of them all; just as no individual could master, as a first discoverer,

all that is known of any other one science; but each succeeding man reaps, in a large measure, from the sowing of his predecessors. Judges, by their suggestions of leading principles, aid us; the writers of our text books should, and a few of them do, aid us still more. And if the time ever comes when this subject receives from the profession the attention which, either as a practical matter or a matter of science, it merits, we shall find men who will devote their lives to such discoveries and elucidations of legal principles as will leave the labors of those who follow after comparatively light.

J. P. B.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

Abstracts of Illinois Cases.[1]

Action.—Where A. agreed to deliver B. all the lumber which A. should make at his mills within a specified time, at a fixed price, of which one hundred dollars was paid at the execution of the agreement; A. failed to perform, whereupon B. sued upon the special agreement and recovered judgment; afterwards B. sued for money had and received, to recover the $100, paid on the execution of the agreement; HELD, that the former proceedings and judgment were a bar to a recovery in the second action. *Dalton et al.* vs. *Bentley.*

Agent.—Where a number of persons are intrusted with powers in matters of public concern, and all of them are regularly assembled and consulting, the majority may act and determine, if their authority is not otherwise limited and restricted. *Louk* vs. *Woods.*

In such case where a report is only signed by two of three viewers of a road, it will be presumed that the third was present and consenting, until the contrary is shown. *Id.*

Assignment.—Property, in the hands of an assignee, for the purpose of paying creditors, cannot be reached by attachment or garnishee process. *Kimball* vs. *Mulhern et al.*

Autrefois Acquit.—A person indicted for murder may be found guilty of manslaughter, and such finding amounts to an acquittal of the charge of

[1] We are indebted to the learned Reporter, E. Peck, Esq., for the early sheets of 15 Ill. whence these abstracts are taken.